



Internet is your passion

Copyright as a limit to the freedom of expression on the internet

Carolina Botero
Laura Mora
María Juliana Soto

Fundación
Karisma

karisma.org.co/internetestupasion



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Draft of report results
CODE-Colombia project

Carolina Botero
Laura Mora
María Juliana Soto

Karisma Foundation

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* The authors note: Our report is the result of an investigation carried out 2016 in the project "Understanding the Socio-Economic Impact of Copyright in the Digital Economy" (CODE project). It's important to emphasise this date, because in three years many of the practices complaints and recommendations that were reflected in our work, have been able to change. We hope that this contribution is read as the testimony of a series of dynamics of the digital world in Colombia in a given period of time. A photograph of the internet

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Written by:

Carolina Botero
Laura Mora
Maria Juliana Soto

Editorial Coordination:

Diego Mora Bello

Design and layout:

Rubén Urriago



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Foreword

This report is the result of the [Karisma Foundation's](#) participation in the project *Understanding the Socio-Economic Impact of Copyright in the Digital Economy* (CODE project, 2016) in which different NGOs and academics working on human rights and Internet issues in the United States, Brazil, India, Chile and Colombia collaborated. The study sought to investigate the impacts of copyright in audiovisual projects and expressions that circulate on the internet through different platforms.

The Karisma's report analyzes some problems arising from the content control in social media generated in Colombia with the application of the Digital Millennium Copyright Act (DMCA). The DMCA is a US standard that impacts the accounts of users worldwide, given that the most popular social networks are US-based companies and, therefore, comply with its laws.

Our investigation shows that the DMCA's notice and takedown system, which has no due process guarantees and is disproportionate, is taking people out of the web, censoring them, intimidating them, and limiting their right to freedom of expression, without trial formula. In 2016, we followed up on some cases reported on Twitter with the hashtags #nomascensurawinsport (#No-moreWinsportcensorship) and #elcanalquetodosodiamos (#Thechannelweallhate). In addition, we find other cases of persons affected by notifications of possible copyright infringement and automatic content removal systems.

The risks that content control has for the exercise of human rights are multiple. Regulations are displacing the role of the courts; private companies are the ones that are shaping the internet and have an even more leading role in what can or cannot be published there. It is important to remember that the consequences do not only affect public figures, journalists, politicians or large organization. Research shows that they also affect the freedom of expression of many people, who do not necessarily have sush profiles. There is a thin line between a measure that seeks to control abuse and censorship.

The adoption of the EU Copyright Directive in March 2019 is a sign of the urgency for both internet services provider (ISP) and policymakers to mainstream a human rights approach when



addressing content regulation through copyright law. This new regulation imposes, among other things, the use of automated filters that will review the contents before they are published. The adoption of this measure will sharpen the imbalances discussed in this report. In addition, it represents an even more restrictive scenario than the current one, since it implements prior control systems on the platforms. In other words, it will become an instrument of preventive censorship.¹

For such a proposal to be implemented in our context, it would first have to conform to the Inter-American Human Rights System that prohibits practices such as preventive censorship. However, since we recognize that on the Internet borders are difficult to define, the Directive is undoubtedly a bad example for the region.

In an open letter published in April 2019, some Latin American civil society organizations, including Karisma, express our concern about the effects of the European Directive on our continent. With respect to the central issue of this investigation, we point out in the letter:

“Automated filters have been criticized for two important reasons: their lack of transparency in the way they work and make decisions; and the many “false positives” included in their results (especially when algorithms must navigate through the complexities of local laws that have copyright exceptions and other legitimate uses, which is difficult even for specialists). In addition, it is not yet known what kind of appeal mechanisms will be enabled by the platforms, which is not a great relief if we consider the problems of the current system, and how they will respond to the affected users in Latin America and the Caribbean. In addition, these mechanisms do not have oversight control systems.”

Other points in the letter raise concerns regarding freedom of expression, surveillance risks, increased economic homogeneity, restrictions on competition and innovation, the impact on information diversity and media pluralism, among others.²

We recognize that the Internet is a disruptive tool that has allowed the circulation of voices, and creations of diverse people and places. For this reason, we consider that these types of regulations threaten the idea of a free, open and participatory Internet that we promote. We hope that this report will contribute to the debate to counterbalance the European agenda that threatens to consolidate itself as a role model for many countries, including Colombia.

We believe that the data collected in 2016³ are still relevant and contribute to the discussion, bearing in mind that, on the one hand, the problems of the users persist and tend to worsen. On the other hand, content regulation continues to be a pending debate in Colombia, which also faces pressure from the United States to comply with the implementation of the FTA so that the legislation can be adjusted and a private content control system can be created.

1 American Convention on Human Rights (Pact of San José), Article 13. Recovered on 15 July 2019. Available at <https://www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm>.

2 The full letter is available at <https://karisma.org.co/la-directiva-europea-de-derecho-de-autor-y-su-impacto-en-los-usuarios-de-america-latina-y-el-caribe-una-perspectiva-desde-las-organizaciones-de-la-sociedad-civil/>

3 Throughout the document, any relevant update will be indicated.



Introduction

The flags and the T-shirt are ready; the match is in the stadium where the soccer team that is carried in the heart plays. At minute 45 of the second period, probably the last chance to win, the play starts, a pass and a goal, the fans celebrate. The most emotional moments are recorded on the cell phone and, almost in real time, are on YouTube, Twitter, Facebook and Vine. It's a soccer Sunday, happiness is complete. A couple of days later a message appears in the personal email account mentioning that the videos and photos have been deleted and that even the account could be deleted. This is how the fan learns it has been "notified" of a possible copyright violation.

Indeed, penalty shots, short plays, goals and even videos recorded from the bleachers of the stadiums and televisions in the homes of fans and sports followers were removed by these platforms following the system of "notice and takedown" of contents of United States copyright law.

In the notices they received, a third party claimed that the exclusive right to retransmit the matches of the Colombian soccer tournament belonged it¹ and therefore, the reason for the takedown was copyright infringement. The situation became public in March 2016 when the **#NoMasCensuraWinSports** hashtag became a trend on Twitter, thanks to the fact that the affected people used it to express their disagreement. A situation that was repeated in May, this time the hashtag was **#ElCanalQueTodosOdiamos**.

However, Colombian soccer fans are not the only ones who see their content disappear from the network. Some of these fans are professional fans, who are using the networks to strengthen and create a trade in commenting on sports, or are journalists. Nor is it exclusive to sports, there are also artists and cultural managers who have also been notified by different platforms about alle-

¹ According to the information provided by the portal of the WinSports channel, this "is the only media that has the rights to broadcast Colombian Professional Football (FPC for its Spanish acronym), reason why, no media or a third party may record, fix or broadcast in whole or in part by any means known or to be known, the matches of the FPC, consequently, who wants to do so, must have the prior and express authorization and negotiation of such rights by said channel." See: Winsports (2016) "Win Sports explains everything related to the use of FPC material here." Available (in Spanish) at: <http://newadmin.winsports.co/futbol-colombiano/noticias/win-sports-te-explica-aqui-todo-lorelare-con-el-uso-de-material-del-fpc-5616>



ged infractions of copyright they have committed on their channels, although in some cases the “infringing contents” are their own, original creations.

The cases that will be reviewed in this document put several of the concerns in context that have been expressed in the discussions on freedom of expression, responsibility of internet intermediaries and copyright in digital environments. For example, are content removal mechanisms balanced for owners and users? If the removal of content was incorrect, who assumes responsibility for the possible violation of freedom of expression or possible economic damage that could have been caused? What is the role of Internet intermediaries to defend the rights of people? How committed are Internet intermediaries to international human rights principles that have been developed in relation to their role in digital ecosystems? Are the transparency reports presented annually by Internet intermediaries sufficient?

What is understood by Internet intermediaries (ISPs) is explained in Article 19 in its report “*Intermediarios del Internet: el dilema de la responsabilidad*”.² There are different types of intermediaries, such as Internet access providers, web hosting service providers, social media platforms and search engines; intermediaries are distinguished from “content producers,” the latter being those people or organizations that are responsible for the production of information and its online publication.”

The “content producers” - nowadays any person who uses the Internet - and the ISPs are in a permanent relationship. Given this closeness, tensions and conflicts have not been expected, in fact, they have been addressed in various scenarios such as the World Intellectual Property Organization,³ the World Internet Governance Forums,⁴ and through reports and initiatives of civil societies such as OnlineCensorship.org led by EFF and Visualizing impact,⁵ the Lumen Data Base project of the Berkman Center,⁶ or The Manila Principles on the responsibility of Internet intermediaries throughout the digital ecosystem.⁷

The GNI (Global Network Initiative) also appears in this scenario, a coalition made up of companies from the sector of ICTs, investors, members of civil society and academics, within whose objectives are to provide guidance to these companies and interested parties on how to protect

2 Article 19 (2013). “Intermediaries of the Internet: Responsibility Dilemma - Questions and Answers Session” Report available (in Spanish) at: <https://www.article19.org/resources.php/resource/37243/es/los-intermediarios-del-internet-dilema-de-responsabilidad-%E2%80%9393sesi%C3%B3n-de-preguntas-y-respuestas>

3 WIPO. “Internet Intermediaries and Creative Content” Available at: http://www.wipo.int/copyright/en/internet_intermediaries/index.html

4 For more information about the IGF <http://igf2016.mx/>

5 See <https://onlinecensorship.org/>

6 See <https://lumendatabase.org/>

7 The principles propose a series of guidelines to protect freedom of expression and create an environment conducive to innovation, and were created so that public policy makers and intermediaries consider a reference framework for minimum guarantees and good practices when it comes to “elaborating, adopting and reviewing legislation, policies and practices that govern the responsibility of intermediaries for third party content”



and promote the human rights of freedom of expression and privacy, especially when faced with pressure from governments to take actions that may violate these rights.

On the other hand, in the Colombian legislative context, it is important to mention that the Santos government first presented a copyright reform bill in 2011, which was known online as the “Ley Lleras 1” (Lleras Law 1)⁸. This bill sought to create a “safe harbor” to avoid the liability of Internet intermediaries. To this end, a notice and withdrawal system was created in Colombia based on the “Notice and Takedown”⁹ that is contemplated in the [Digital Millennium Copyright Act \(DMCA\)](#)¹⁰ or copyright law in the United States. The Lleras 1 bill was filed six months after it was presented and is still pending in the country’s legislative agenda. However, the Colombian civil society presented a series of recommendations [for the guarantee of human rights in a law that regulates the responsibility of Internet intermediaries](#) that precisely sought to keep that discussion open in the country. However, local discussions on these issues do not transcend in an important way, among other reasons, because the platforms of expression that we use are substantially tied to foreign laws.

The ISPs involved in this research and, in general, those most used on the Internet, are domiciled in the United States, and therefore the DMCA and the mechanisms contemplated by this law have special relevance. However, the exercise of the rights of individuals and their ability to activate them in a digital economy is closely linked to the local context in which their relationships develop. This component is central, for example, to the possibility of being informed, reporting and creating opinions and, therefore, it must be considered when talking about the problems identified in this report, mainly related to the tension between freedom of expression and copyright. It could be said that for a platform to be global it must also be local.

The tension described is a real problem that has been especially documented and denounced as censorship of journalists, human rights defenders or minority groups. In relation to the elimination of content and / or accounts on the Internet of these sectors, different organizations have been pronounced and are described in reports of international human rights organizations such as the Office of the Rapporteur on Freedom of Expression of the OAS, which analyzes, year after year, “issues related to state regulation, the private sector and freedom of expression in the digital age.”¹¹

8 In Colombia, the Lleras Law has been called the various attempts at copyright reform derived from commitments acquired after the signing of the FTA with the United States. Therefore, there have been other bills but they do not correspond to the issue of liability of intermediaries that is addressed here. For more information on the Lleras Law saga: <https://karisma.org.co/leyllerasadebate/>

9 See Table 1

10 THE DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998 U.S. Copyright Office Summary. December 1998. Available at: <https://www.copyright.gov/legislation/dmca.pdf>

11 Annual reports of the Office of the Special Rapporteur for Freedom of Expression of the OAS. Available at: <http://www.oas.org/es/cidh/expresion/informes/anuales.asp>



However, the cases analyzed here break with this trend. It is about other types of expressions, related to culture, with daily actions of Internet users, such as sharing a video or a picture of a soccer match, a chat at a bar or their own original musical composition. All this is evidence that the potential of the Internet for any person is endangered by these practices and recalls what the UN Special Rapporteur said in 2011 for the promotion and protection of the right to freedom of opinion and expression, who [pointed out the dangers that the exercise of this right these types of systems imply](#),¹² which are disproportionate and not very transparent in relation to how the verification of the complaint and the removal of content is done, as well as generating a censorship effect for people who use the Internet and a due process of law problem. Ultimately, these systems do not offer enough information to the people affected and, consequently, have fewer resources to defend themselves, when they do.

The research carried out by the Karisma Foundation seeks to analyze the impact of these non-judicial procedures for the exercise of the freedom of expression of any user of the network in Colombia and also suggests that these restrictions have an effect on their active participation in the digital economy. This report reflects the results describing, in the first place, the way in which the ISPs YouTube, Twitter, Facebook, Vine and Instagram say they carry out the “Notice and take-down” process, that is, what their terms and conditions of use announce. The second part of the document explains and contrasts this procedure with the experience of 11 interviewees and with other documents that make it possible to identify their effects - for example, with the transparency reports of the ISPs. The third part of the document identifies the main problems and loopholes in the way ISPs conduct this procedure, and therefore in the way they protect the rights of users of their platforms. And finally, a series of recommendations are presented for the ISPs to improve these practices.

12 ars TECHNICA. “UN report:” three strikes “Internet laws violate human rights” Available at: <http://arstechnica.com/tech-policy/2011/06/un-free-speech-watchdog-blasts-three-strikes-rules/>



How does the “notice and takedown” system work on the most common content platforms on the Internet?

In order to analyze the way in which the country's main social networks (YouTube, Twitter, Facebook, Vine and Instagram) implement the legal obligations (DMCA) of content reduction and cancellation of accounts due to the possible violation of copyright of third parties, the Karisma Foundation analyzed the policies and public information of each of these platforms. The results are collected in the following pages.

Information they offer about counter-notices

The first finding that draws attention in this research is that, in the Terms and Conditions of Use of the platforms, there is abundant information and even resources (such as guides and support) that inform on how to carry out notices. In fact, on some platforms there are even friendly resources to carry out notices; this facilitates the complaints by those who believe their copyright is affected. This is the case on [Facebook](#), [YouTube](#) and [Instagram](#). On the other hand, Twitter and Vine, although they do not have tools of this type, they do inform the owners that the procedure consists of sending a notice to a certain email.

It is important to understand that, in line with the DMCA, the ISPs notify the person against whom a complaint has been filed for possible copyright violation after they have already removed the contents - this is warned in the terms and conditions of use of the platforms analyzed. With the *fait accompli*, the affected people will receive a notice informing them that their content has been blocked or eliminated, even the ISPs, in order to “do everything possible to inform the user of the takedown of the material and the notice,”¹³ a copy of the complaint filed could be delivered to the people affected. However, none of the ISPs state the submission of the complaint in their policies,

13 See: “17 U.S. Code § 512 - Limitations on liability relating to online material” Available at: <https://www.law.cornell.edu/uscode/text/17/512>



to the extent that the interviewees know who reported them and what content they reported, but they frequently state that they are not clear about the “why.”

The DMCA, recognizing that the notice may be wrong or abusive, allows those who have received a notice to make counter-notices. This means that people accused of alleged violation of copyright law can respond to the notice received. However, as described below, in the terms and conditions of use of the ISP, the tools to carry out this procedure are insufficient, whereas the notice process is much more described, explained and supported.

For example, while the YouTube Terms of Service only explains “[basic points about counter-notices](#),” information about notices includes an [automated tool](#) to elaborate them, that is, the complainant is guided in the step-by-step process.¹⁴

In the case of Facebook and Instagram, the terms and conditions of use include [information](#) on how counter-notices should be processed in accordance with the DMCA. Facebook notes that it abides by the procedures of the law and that instructions to respond to a notice will appear in the message notifying the removal of content or blocking of an account. This, again, contrasts with the information available to copyright owners which is much [more detailed](#).

On the other hand, although Twitter includes information on its “[Help Center](#)” page regarding the counter-notice, that is, the resource with which those who believe have received an erroneous or abusive notice, the information includes the following warning:

“Submitting a notice of copyright or resource infringement is serious! Think twice before submitting a claim or resource, especially if you are not sure whether you are the actual owner of the rights or authorized to act on behalf of a rights holder. There are legal and financial consequences for fraudulent or bad faith submissions. Be sure to be the true owner of the rights, or have reasonable certainty that the material was removed by mistake, and to understand the repercussions of filing a false claim.”

The statement is true, but it can also be read as a deterrent mechanism. The system is made to encourage reporting and discourage the complaint.

According to the DMCA, once the ISP receives the counter-notice, it must send it to the complainant, who, in turn, must respond if it has initiated a judicial process or not. This same law is clear in stating as an obligation of the ISP that, “If the person who sent the notice does not respond at all to the counter-notice, the ISP must restore the content in no less than 10 days or more than 14.-(g)(2)(C).”

¹⁴ When the terms and conditions of service of these platforms are consulted, no further information is given on the counter-notice process, even in some cases this mechanism is not mentioned; it is only until the users receive a notice that their contents have been withdrawn or their accounts deleted, that they are informed about the possibility of counter-notice if they consider it necessary. This is a fundamental problem of transparency.



However, as we will see later in the documented cases, it is necessary to say that the support to make the counter-notice offered by some platforms through the text of the notice is more complete.

Another problem identified is related to the possibility of following up on the counter-notice. In other words, it is usual that the procedures, complaints, or comments that a person initiates with a platform receive a number that starts a “ticket” that allows following the process and establishing who is responsible for answering the concern. However, this “number” does not guarantee that a person affected with content taken down or cancellation of its account has a way to follow its case. Initiating a counter-notice is like throwing a message in a bottle into the sea, some have a happy ending but everything indicates that most are lost at sea.

The big problem: the language

Although the analyzed ISPs have information about the counter-notice process in Spanish, the notices that users receive are written in English (with the exception of YouTube). Given the difficulty that this poses, so that people can be informed of the situation in which they find themselves, it is also not clear if the complaint and counter-notice procedures can be done in a language other than English. In the terms and conditions of service this possibility is not explicit.

It is also striking that ISPs, in their terms and conditions of service and in their internal policies, report that they can eliminate accounts for repeated complaints of copyright infringement. However, no indication of this procedure was identified either in the public documents or in its web pages, or in the notices received by the affected persons consulted in this research, not even the number of complaints justifying the closing of accounts. That is, if the information on the counter-notice procedure is insufficient due to possible copyright infringements, then what happens in the case of account cancellation remains in the dark.



And how do counter-notices work in practice?

In order to answer this question, 11 interviews were conducted with users affected by notices received through Twitter, Facebook, Vine, YouTube and Instagram. These are some of the stories that were entered:



Created by Chiara Claus
from Noan Project

@andresacosta20

According to his Twitter profile, he is a publicist, geek, runner and gamer. Video game and technology editor at @LaNacionGeek, and a sports fan.

Since February 2016 (and even before) he began to receive a series of emails from Twitter in which he was told of the removal of different content; the message said:

"Hello. The following material has been removed from your account in response to the DMCA takedown notice copied at the bottom of this email"

Later it described the tweet and then indicated the steps to carry out the counter-notice with the warning:

"BY SENDING US A COUNTER-NOTICE, YOU CONSENT TO THIS DISCLOSURE OF YOUR PERSONAL INFORMATION.

Please note that repeat violations of this policy may result in suspension of your account. In order to avoid this, do not post additional material in violation of our Copyright Policy and immediately remove any material from your account for which you are not authorized to post."

Finally, his account was closed and he was never able to recover it, although he did the counter-notice process. The only response he received was:

"Hello,

You tried to update a case that has been closed. Please submit a new case at <http://support.twitter.com/forms>. You can also visit our help center at <http://support.twitter.com> for self-help solutions to common problems.

Thank you!

Twitter Support"



@Juezcentral

Created by Chiara Claus
from Noun Project

This is a soccer fan who, through his Twitter account, seeks to tell curious facts about this sport. In mid-March 2016, after receiving several emails from Twitter, informing him that some of its contents had been removed due to possible copyright infringements notified by the Spanish Football League and RCN, his account was suspended. He did not do the counter-notice process until his account was closed, since according to what he said before, he did not understand the process. On April 28, after submitting the following counter-notice – with his contact information and digital signature – his account was reinstated:

"I swear under penalty of perjury that I have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

I consent to the jurisdiction of the Northern District of California, and I will accept service of process from the person who provided notice under 17 U.S.C. 512 (c)(1)(C) or an agent of such person."

So far, he is one of the few users who were immersed in this situation where the counter-notice process served him; however, to exercise his defense, he had to do it in English.



@Humoblancol1

Created by Chiara Claus
from Noun Project

This is a humor and information account about Once Caldas, a team that plays in the Colombian Soccer League. By March of 2016, the administrators of this account received 2 notices in which RCN stated that some of its contents violated the channel's right to broadcast the professional Colombian soccer matches. Then Twitter suspended the account.

They made the counter-notice in English (because they also received the messages in English) and initially there was no response, until the platform sent them an email saying that the suspension had been lifted and that the content had to be deleted and that receiving another notice would mean the definitive suspension. The process lasted more than a month in which Twitter did not answer anything on the case, so they temporarily had to open another account until they could retrieve the original one.



Created by Chiara Claus
from Noun Project

"Lo Doy porque Quiero"

This is a discussion space that functions in Medellin, Colombia, and whose purpose is the exchange of ideas and knowledge for which multiple audiovisual aids are used. "Lo Doy porque Quiero" occurs in a bar and the recording of the chats is later uploaded to YouTube.

Although, in this case, the contents have not been eliminated or the account closed, their videos have been silenced and they have received messages from YouTube informing them:

"A copyright owner has claimed against content that appears on your video through Content ID."

The reason is that, in the video uploaded to YouTube, the audiovisual aids used in the chat can be seen or, in other cases, a song playing in the bar can be heard during some period of the chat.

With the support of the Karisma Foundation, they started the counter-notice process on the YouTube platform, however, although they stated that they were making fair use of the content, their claims were not accepted and their videos continue to be silenced.



Created by Chiara Claus
from Noun Project

Séptima Carta

This is a group of musicians from Venezuela from whom YouTube removed content from their channel for alleged violations of copyright. The situation was presented in July 2016 when the group received a message in their email account informing them that, due to a notice of non-compliance with copyright they had received, they had to delete their video called Septima Carta - Desires of an Awakening + Piano Solo (En Vivo Centro Cultural BOD) and that the complaint had been issued by Caracol Televisión S.A.

The surprising fact in this case is that the group is the composer of the song and the producer of the video published on YouTube. This situation led the group to start the counter-notice process, even with the warning that the platform gave:

"Serious legal consequences can be generated if you send a counter-notice with false information."

It is worth noting that the notice sent by YouTube also indicated that as holders of the channel, they should take a mandatory "course" on copyright updating. Although after a few days its content was restored because Caracol withdrew the complaint, the feeling of Septima Carta is that throughout the process they did not have the opportunity for a timely defense, they never knew the reasons for the complaint by the television channel; they had to make a counter-notice in the limited number of characters and were affected economically, to the extent that this video was being presented as part of the release of their musical project.



@Yeimis

Created by Chiara Ciani
from Noun Project

This is a fan of América de Cali who posted 5 short videos of Colombian soccer league players on his Twitter account. On September 15, he received, one after the other, 5 messages in English where he was informed of the take-down of the videos and immediately afterwards, about the cancellation of his account. The reason was that RCN filed a complaint with Twitter on the grounds that its publications were violations of the exclusive right of its television channel to the league matches.

This case began to move in social networks when Yeimis himself published a video in which he asked WinSports (channel of the company RCN) to restore his account, because apart from being a channel to express his passion for soccer, he uses Twitter to support his needs as a person with disabilities, carry out actions in health matters and follow up on a claim to the social security system of the police.

Since the emails arrived in English he could not understand what was happening. He thought that it was enough to answer some of those emails asking for the account to be restored. At that time, the Karisma Foundation heard the case and began to help, explaining that it is necessary to answer each of the notices and that it must be done with specific conditions and statements and, ideally, in English because, by that time, we had established that it was more efficient.

Just doing this was not easy and took several days. However, a few hours after sending the counter-notices, Yeimis recovered his account. But success cannot be attributed to the counter-notices that the Foundation helped to carry out. Everything indicates that the account was enabled because RCN retracted the claim.

Of the 11 people interviewed, 8 were related to the #NoMasCensuraWinsports case and received notices of content removal or cancellation of accounts for possible copyright violations reported by the RCN and / or WinSports television channels, broadcasting organizations that have the license to broadcast Professional Colombian Soccer matches (although some said they had previously received notices signed by the Spanish League). They closed the account of 6 of them (1 stated it was only temporarily).

It seems that television channels use the DMCA's "notice and takedown" mechanism designed to respond to copyright problems, even though the problem is not a violation of copyright but rather the right of retransmission. In that sense, it is important to remember that soccer matches are not protected by copyright, as they are not considered works or creative tasks.

On the other 3 people whose content is varied and different from the sporting theme, it can be said that: in one case, the notice was made on behalf of the Caracol Channel, another is by record



companies - some of them from the USA and another from the United Kingdom - and the third case did not even receive a notice, they simply deleted its fan page on Facebook without any kind of justification or notice.

Example of the notices some of those people affected received

"Hello,

We've removed or disabled access to the following content that you posted on Facebook because we received a notice from a third party that the content infringes their copyright(s):

Video uploaded on November 18th, 1:09pm PST

If you believe that this content should not have been removed from Facebook, you can contact the complaining party directly to resolve your issue:

Report #: 483959491788398

Rights Owner: RCN TV

Email: legal@copyrightip.com

Copyrighted Work: A video my organization or client created

If an agreement is reached to restore the reported content, please have the complaining party email us with their consent and include the report number.

Facebook complies with the notice and takedown procedures defined in section 512(c) of the Digital Millennium Copyright Act ("DMCA"). If you believe that this content was removed as a result of mistake or misidentification, you can submit a DMCA counter-notification by filling out our automated form at http://www.facebook.com/legal/copyright.php?howto_appeal&parent_report_id=483959491788398.

We strongly encourage you to review the content you have posted to Facebook to make sure that you have not posted any other infringing content, as it is our policy to terminate the accounts of repeat infringers when appropriate.

For more information about intellectual property, please visit our Help Center:

<https://www.facebook.com/help/370657876338359/#15>

15 This message was sent to a Facebook user in 2016 after posting a video taken from the stadium. It was shared with the Karisma Foundation in the framework of an interview for this research.



Of the 11 cases analyzed:¹⁶

- All the cases studied are of men, frequent users of social networks, with different purposes, such as: sharing their passion for football, distributing their own content - songs, compositions, concerts, lectures, illustrations.
- 5 of the cases correspond to Twitter, 2 to Facebook, 1 to Vine and 3 to YouTube. It is worth noting that the notices received only include the name of the complainant and the protected work under the claim (none received a copy of the complaint itself).
- 10 received notices about takedown of their contents, 7 accounts were canceled, 1 did not receive any type of notice.
- 9 of them took some action, either answering by email or completing the information indicated by the ISP, that is, they started a counter-notice process. Some of them presented the response in English and others in Spanish. Of these, only 5 recovered their content and/or account.
- Regarding the 4 affected who presented counter-notices without success, 1 responded with the news that their process had been closed, another received in response that their counter-notice was not valid; 2 others never got any response.
- Of the 7 affected with cancellation of accounts, 6 presented counter-notices: 4 recovered the accounts that had been closed. 2 of them without the reason for that recovery being explained, 1 was informed that the reason was the withdrawal of the complainant. The other person mentioned that the counter-notice procedure was successful.
- The 2 people who did not do any post-notice procedure indicated that: 1) they did not do so because they believed it was a US policy that did not affect them and that they did not trust the process. 2) that they felt intimidated by the message received and preferred not to do anything about it.
- Of the 11 cases, 10 correspond to people affected in Colombia and 1 in Venezuela, although the one who put forward the notice is a Colombian company.
- Of the 11 cases analyzed, only 1 is directly related to US complainants.
- Of the 11 cases, 1 found that his account had been closed and he had never received any notice. Then the account was on the air again, and this time there was no notice by the ISP.
- 1 of those affected who presented a counter-notice and did not get an answer, decided to open a new account and change the type of content that he usually shared on his networks, such as photos from the stadiums, videos with plays taken from the bleachers, among others, in order to avoid any possible infraction.

16 See table 2



- The 11 said they could not follow up on their case and the widespread complaint is precisely the lack of clear information about the process.
- 1 of those affected accessed the ISP platform with one of the limited mobile plans offered in Colombia with “zero rating,”¹⁷ which is why it was not possible to carry out the counter-notice in a simple way since he did not have complete Internet access that would allow him to use his email.
- All those affected have the feeling that they did not do anything wrong and yet, now they are aware that they can lose their accounts, therefore they express with a different degree of rejection that they will not be able to continue sharing something that they consider legitimate just to avoid that effect.

During the research, concerns were sent to the ISPs. Twitter’s response made reference to its [transparency report](#)¹⁸ where there is a section dedicated to notices and counter-notices related to the DMCA. The others did not respond.

Twitter’s response highlighted the importance of transparency reports, but for Karisma they also show that they are not appropriate. The absence of the topic in the ISP transparency reports (with the exception of Twitter) is worrisome because this report is one of the few tools that allows monitoring and giving more context to what happens with the freedom of expression and information of the people on the Internet. Twitter is the only one that includes the topic in its report. However, their data could be more appropriate because the report does not discriminate the figures and these are global, so it does not reveal specific cases by country. Twitter’s transparency report provides statistical data on how many notices they received in a certain time range and to how many they responded (on Twitter, Vine and Periscope) and also includes how many counter-notices they received and how many they resolved. [The 2015 transparency report](#) explains that from July to December, about 19,039 notices were received on Twitter and 5,777 on Vine (the report includes Periscope globally but does not include information on this network for this particular issue), while they only received 121 counter-notices (the figure is global, unlike what happens in the notices there is no discrimination of geographic data) and points out that 100% of the counter-notices are successful and that the content was restored. The experience of the people interviewed in this study contradicts this measurement and, therefore, its reliability must be analyzed.

Google - of which YouTube is part - has a transparency report in which data is presented on “Requests for removal of content for copyright infringement”; however, this information is not discriminated by platforms and it is not possible to identify the specific situation of YouTube. Furthermore, there is no information about counter-notices beyond pointing out that this is a possible action within the framework of the DMCA regulation.

¹⁷ “Zero Rating” definition in Spanish at: <https://es.wikipedia.org/wiki/Zero-rating>

¹⁸ “Twitter transparency report.” Available at: <https://transparency.twitter.com>



Meanwhile, in its transparency report, Facebook focuses on evidencing requests for information from governments, but it does not account for the notices that, according to the provisions of the DMCA, it has received as an intermediary, nor the responses to them. Instagram, as a Facebook platform, does not have its own transparency report, nor is it mentioned - in a specific way - in the general Facebook report.

A reading of these figures allows one to say that the problem may be that there is little use of the legal resource by the affected people. This information combined with the data of the eleven cases described, although it is not possible to be conclusive, it can be affirmed that it is another indication that the absence of information and facilities to use the counter-notice by the affected people works as a disincentive. The procedure is not friendly and this is why more ISPs are needed to empower the people affected.

On the other hand, reiterating that the sample collected is not enough to be conclusive, it can also be said that the counter-notice is far from being 100% effective, as stated in the Twitter transparency report. Considering the information provided by the people interviewed, and the information provided in the Twitter transparency report - although the report informs on a different period of time than the cases analyzed - it could be thought that the data of the report assumes that the platform always responds to counter-notices and that all of them are effective. This, as it was evidenced, was not true in the analyzed cases and therefore puts in doubt the data provided in the report or at least questions the basis on which this data is measured; it is possible that the platform does not consider all the counter-notices presented to it as valid and instead, people believe they have presented one.

Finally, what is evident is that the report does not serve to resolve the doubts that arise from the terms and conditions of use and the interviews; where the unsuccessful counter-notice procedures will stop is not known. No response times are provided, nor do we know the reasons why counter-notices, among other examples, are successful or not.

Considering that one of the main characteristics of the Internet is that it is a means of communication that is not only a speaker where people are passive users of information, but it is also a medium in which people are active users of information which assumes that they co-participate in the creation of contents and in the distribution of information; we believe that it is necessary to recognize that the disproportionate application of the notice and counter-notice system, which affects all kinds of people, is going to impact, in a significant and difficult to measure way, the capacity of any person to be an active participant in the digital economy, which manifests itself in terms of the market in the idea of the prosumer, a consumer that is active. Although this effect goes beyond the scope of this document, it should be the subject of later analysis.

So, for example: the musician who has invested in the release of his first online album without the need for intermediaries and for an unfair counter-notice loses all his effort; the sports com-



mentator who is creating his fame on social networks (similar to what bloggers do) and his account is closed; or the cultural spaces that upload the activities they carry out to their networks and lose the exposure of the content on the Internet for using seconds of protected material. All of them suffer damages but they remain invisible and they usually end up in practices of self-censorship and therefore do not take full advantage of Internet options to avoid, above all, the closing of accounts.



The DMCA and its impact in other Latin American countries

In Colombia, the trigger was the case of soccer, and only a few months after the Olympics confirmed the use of “notice and takedown” to prevent people who love sports to do what they have always done: share their passion. In the midst of the competitions that took place in Rio de Janeiro, cases were reported from different people whose accounts on social networks, such as Twitter and Periscope, were closed or their content dropped due to complaints from the International Olympic Committee. One of these cases occurred in Venezuela where [a Twitter user’s account was closed](#)¹⁹ after the publication of different events surrounding the competitions that were developing. The description of the affected party of this case allows confirming that some of the premises described by the interviewees in this research are repeated in their experience. The affected party said he submitted three claims in Spanish to Twitter, under the assumption that the content blocked (videos less than 90 seconds) did not incur any violation. [These claims were sent in Spanish](#)²⁰ and the only response was “Your account has been permanently suspended.” It was when he sent the counter-notice again, this time in English, that he managed to recover his account.

But, as we announced from the beginning, the blocking of content on social networks goes beyond sports and, of course, is not an exclusively Colombian problem. We recall that, in the region, the case of [Ecuador](#)²¹ has been denounced and criticized by civil society for several years. In this country, content takedowns and blockades of Twitter accounts have been registered, in which critical content with the government of President Correa has been published. In this case, according to the information reported by the people and organizations affected, it is even more complicated to carry out any action, as they do not receive notices of why their accounts have been blocked and how, in some cases, they suddenly have access again.

19 ars TECHNICA UK. “Olympics fan claims Twitter killed his account after posting Rio videos” Available at: <http://arstechnica.co.uk/tech-policy/2016/08/olympics-fan-claims-twitter-killed-account-rio-videos/>

20 See: The Lubrio space. Available at: <http://lubrio.blogspot.com.co>

21 Digital Users “Press release: Digital Users rejects blocking of Twitter accounts that disseminate public information”. Available (in Spanish) at: <http://www.usuariosdigitales.org/2016/07/20/boletin-de-prensa-usuarios-digitales-rechaza-bloqueo-de-cuentas-de-twitter-que-difunden-informacion-publica/>



Conclusions

The cases analyzed show several situations. First of all, that the protectionist perspective of the current rules of copyright in the world can become an important barrier to the free expression of people on the Internet. Second, that the ISP's own policies in relation to the takedown of content and the so-called "community rules" that are applied in the platforms, are unbalanced in favor of the right holders and therefore have not been designed to seek respect for the right to freedom of expression and access to information for those who use their platforms. The way in which this affects the ability of people to act as "prosumers" in a vibrant digital economy is still to be analyzed and, above all, measured.

The elimination of content and/or accounts, either by legal mandate (for example, the mechanism of "notice and takedown" of the DMCA) or by the terms and conditions of service of the platforms themselves, has a significant impact on the lives of people, particularly in their right to freedom of expression, although it may have an impact on other rights, such as health, in the case of Yeimis or access to culture for the followers of Lo Doy Porque Quiero.

The tension that is evident in this research is a problem for Internet users who see a public space in digital platforms – like social networks – to express themselves, create and even enjoy culture.

As a housekeeper strategy, the conditional immunity of the DMCA provides a clear incentive for the guardian, and although it imposes considerable costs – the ISP must have a responsible person in its company to attend to these procedures – it does not impose diffuse or disproportionate duties of monitoring and surveillance. The users and the community, however, generally assume the costs.

On the one hand, the user who is affected by a wrong takedown runs the risk of 'losing' the content – at least temporarily – and assumes the burden of defending it. On the other hand, the community in general is affected by expressions and information that are excessively removed. On account of the balance of the incentives, the ISP loses nothing with the removal of material and it gains a lot with the entrance into the safe harbor.²²

22 Cortés, Carlos (2013). "The keys of the housekeeper". Document produced by the initiative for Freedom of Expression on the Internet (iLEI), from the Center for Studies in Freedom of Expression and Access to Information (CELE) of the Faculty of Law of the University of Palermo, Argentina. Available at: <http://carloscortes.co/mi-trabajo/2013/8/27/las-llaves-del-ama-de-llaves-la-estrategia-de-los-intermediarios-en-internet-y-el-impacto-en-el-entorno-digital>



The mechanisms of elimination or blocking have become a difficult obstacle to overcome and counteract, which affects anyone using the Internet. According to the cases analyzed in this report, we can highlight at least seven relevant problems of the current DMCA notice system:

- **Jurisdiction:** One of the most problematic issues for people who use these types of platforms in Latin America is that if their content was eliminated or their account canceled they must be willing to sue in the United States. If they decide to counter-notify and the complainant initiates legal action before the court to sue them, that person must accept the jurisdiction of the US courts. This generates an inhibitory effect, that is, it generates so much intimidation that it ends up dissuading the person from defending its right to express itself freely due to the threat of a legal sanction that can mean a very high economic cost and the burden of following a legal case in a language different from their first language.
- **Language:** Although the terms and conditions of the platforms are available in Spanish (with the exception of Vine, but this refers to the Twitter Help Center that is in Spanish) the problem with the language is presented at the moment the notice arrives. This represents an important barrier for the access of people who do not know this language, much less to face a text with legal and technical particularities. The inability to understand what happens and how they should respond prevents them from defending themselves, which was clear in the case of @Yeimis.

On the other hand, when the platforms address the issues related to the possibility that a counter-notice may occur, it is not clear whether this can be done in a language other than English. What we know derives from the experience of the interviewees: sometimes the platform notifies the affected person whose content has been deleted or its account closed in English, as well as the procedure that must be followed to counter-notify, if this is the case. On other occasions, we learned that the notice had arrived in Spanish. This shows there is no established and standardized procedure. This can represent a limitation to the affected person and its adequate defense in case of needing it, either because they consider that there is an error or that the complaint is unjustified. But perhaps the most worrisome is that the cases analyzed show that there is a greater chance of success if the affected person responds with a counter-notice in English than if he or she does it in Spanish. No doubt the language is a barrier to the exercise of the rights of Internet users.

- **Response to counter-notice:** According to the DMCA after the ISP receives the counter-notice from the person whose content was blocked or deleted, it forwards it to the person who reported the content. As of that moment, the intermediary has between 10 - 15 days to know if the plaintiff filed an action before the court; in case of not doing so, the platform must restore the blocked content or the account that was closed. This process is not effective, none of the platforms use it, the platforms do not send the complaint and,



although there seems to be a follow-up, the reality in the cases analyzed was that few of the counter-notices had the effect expected by the people and only one was able to know why. Nobody knew about this effect and none of them seem to have been applied. It is very possible that the platforms do not have this mechanism implemented, as it is explained below.

- **Follow-up to the procedure.** In the absence of information on the counter-notice already described, it is added that there is no follow-up mechanism by the ISPs for the counter-notices made. Of the cases that Karisma studied, what we see is that the ISPs have not implemented, within their protocols, a way to enforce the legal provision that obliges them to inform the affected party of the complainant's response (if any) and to restore its content or account when, in the presence of a counter-notice, the complainant does not act before the courts. It is worrying, for example, the case of "Lo Doy Porque Quiero", the affected party counter-notified and then received an email in which the platform told them that, despite this, the complainant maintains that there is an infringement, i.e., the act of the platform goes directly contrary to the norm, it simply takes the word of the owner and does not provide proof that a judicial process has been initiated as required by the law.
- **There are no data on this problem in the transparency reports,** although most of the ISPs evaluated have a transparency report, they refer mainly to requests for information from the governments, they are not explicit about how they carry out other processes that may affect user accounts such as the one contemplated by the DMCA; only Twitter gives some information about this problem but it does it in an insufficient way. However, the effort of this social network is recognized for being more transparent since they [advertise in their copyright policy](#):

"In an effort to be as transparent as possible about the elimination or restriction of access to content published by users, we clearly mark the Tweets and the withdrawn multimedia content so that they indicate to the viewers when the content has been withdrawn (some examples below). We also send a copy of each copyright and resource claim we process to Lumen, where they are posted on a public website (without your personal information)."

- **Cancellation of accounts:** Another problem that is worth highlighting is related to the lack of information on the number of complaints that justify the cancellation of the accounts. In this sense, the disproportion and lack of transparency of this procedure in relation to the information and rights of the person affected by the closure of their account is even more worrisome. It is not clear how many notices are necessary for a platform to decide to close a user's account, there is no information about this and the people who suffer the cancellation do not understand what is happening. It is a labor of deduction to establish that, to recover the account, it is necessary to process counter-notices to recover the contents. This is despite the fact that the effect for people of this measure can



be even stronger than that of losing content, they lose their account, their followers, and their history.

- **Guidelines and manuals.** ISPs do not have guidelines and manuals that facilitate counter-notices, while they do have similar tools to support notice processes. This absence is felt and considerably unbalances the distressed parties.



Recommendations for ISPs

The cases presented in this report are a reflection of a problem of large dimensions, where YouTube, Instagram, Vine, Facebook and Twitter – among others – as Internet intermediaries must assume a commitment to people's right to freedom of expression. This affirmation is not something new, as it has been expressed by other civil society organizations that are also monitoring the possible abuses derived from the content removal systems of platforms such as the EEF project's [Onlinecensorship.org](https://onlinecensorship.org)²³ and Visualizing Impact and the Lumen Data Base,²⁴ from the Berkman Center.

The conclusions of this research are aligned and adhere to the recommendations presented by these other projects aimed primarily at the ISPs implementing best practices that respect the rights of all Internet users and not only the copyright owners:²⁵

- Companies must work to ensure that their policies reflect the linguistic diversity and other needs of the countries in which they are present; this implies that in addition to publishing their policies clearly, in simple language and being easily accessible, they should ensure that the following steps to consult the terms and conditions or the frequently asked questions can also be done in different languages.
- ISPs should work on improving their appeal processes to ensure that content that has been wrongly deleted can be easily restored. This starts by giving people better information and by facilitating mechanisms to present a counter-notice, as it is actually done with the copyright holders who want to make a claim.

²³ <https://onlinecensorship.org/>

²⁴ <https://lumendatabase.org/>

²⁵ Some of the recommendations given by Report 1 were taken into account. "UNFRIENDING CENSORSHIP. Insights from four months of crowdsourced data on social media censorship" and report 2" CENSORSHIP IN CONTEXT. Insights from Crowdsourced Data on Social Media Censorship "presented by onlinecensorship.org in March 2016 and November 2016 respectively. These were adapted to the present report based on the conclusions derived from the case studies proposed here and the particularities of the same. The reports in mention are available online at: https://s3-us-west-1.amazonaws.com/onlinecensorship/posts/pdfs/000/000/044/original/Onlinecensorship.org_Report_-_31_March_2016.pdf?2016 and https://s3-us-west-1.amazonaws.com/onlinecensorship/posts/pdfs/000/000/088/original/Censorship_in_Context_November_2016.pdf?2016



- Transparency reports are a tool that generates confidence with users, as it allows them to know the actions of the ISP in order to manage and use their data, and also provides information necessary to guarantee the rights of those who access these platforms. For this reason, we also recommend expanding transparency reports, including information related to content deletions made on the basis of reports from other users or not from the platforms and not only those of the governments.
- Regarding transparency, ISPs are recommended to work on making their processes more transparent by making the process of content management, complaints and counter-notices more clear and public. In this regard, it is necessary that people who have been reported know the complaint in order to exercise an adequate defense. It is not enough just to give the name of the person who filed the complaint and, in any case, is an element that the DMCA itself considers.
- ISPs must adjust their procedures to comply with legal requirements so that the procedure includes due follow-up to the counter-notice process so that, within the term of the DMCA, the content (or account) is restored if the complainant does not submit the judicial complaint.
- These platforms that manage the data of millions of people around the world, must work on educational tools for those who make use of their services, in which they clearly indicate which actions are incorrect, which policies they may violate, how they can defend themselves; and not simply wait for an action to be given to punish them and remove them from the platform for some time or indefinitely.
- Finally, we recommend not only the ISPs, but also the civil society organizations and international multilateral organizations that have been interested in this problem, to consider the impact of these procedures for people in general, for small cases, that is, common users – who are not necessarily activists, opponents or people of a specific population or minorities – who are affected daily by the possible abuses derived from the notice and takedown system and who do not know what they are dealing with.

Countries that, like Colombia, have not yet legislated to create “safe harbor” systems for Internet intermediaries, must learn from the failures of the US “notice and takedown” system and not repeat them to the detriment of the people.



References

- Annual reports of the Office of the Rapporteur for Freedom of Expression of the OAS. Available in Spanish at: <http://www.oas.org/es/cidh/expresion/informes/anuales.asp>
- ars TECHNICA. "UN report: "three strikes" Internet laws violate human rights" Available at: <http://arstechnica.com/tech-policy/2011/06/un-free-speech-watchdog-blasts-three-strikes-rules/>
- ars TECHNICA UK. "Olympics fan claims Twitter killed his account after posting Rio videos" Available at: <http://arstechnica.co.uk/tech-policy/2016/08/olympics-fan-claims-twitter-killed-account-rio-videos/>
- Article 19 (2013). "Los intermediarios del Internet: Dilema de responsabilidad –sesión de preguntas y respuestas" (Internet intermediaries: responsibility dilemma – questions and answers session). Report in Spanish available at: <https://www.article19.org/resources.php/resource/37243/es/los-intermediarios-del-internet-dilema-de-responsabilidad-%E2%80%93sesi%C3%B3n-de-preguntas-y-respuestas>
- Cortes, Carlos (2013). "Mirar hacia el norte es mirar hacia atrás: el impacto negativo de la DMCA. El mecanismo de notificación y retiro y las Medidas Tecnológicas de Protección" (Looking north is looking back: the negative impact of DMCA. The notification and takedown mechanism and the protection technological measures). Available in Spanish at: <http://carloscortes.co/mi-trabajo/2013/8/27/mirar-hacia-el-norte-es-mirar-hacia-atrs-el-impacto-negativo-de-la-dmca-el-mecanismo-de-notificacin-y-retiro-y-las-medidas-tecnologicas-de-proteccin>
- Cortés, Carlos (2013). "Las llaves del ama de llaves" (The keys of the housekeeper). Document produced through the initiative for the Freedom of Expression on the Internet (iLEI as per Spanish acronym), of Centro de Estudios en Libertad de Expresión y Acceso a la Información (CELE, Spanish acronym standing for Study Center for Freedom of Expression and Information Access) of the Law School of Universidad de Palermo, Argentina. Available in Spanish at: <http://carloscortes.co/mi-trabajo/2013/8/27/las-llaves-del-ama-de-llaves-la-estrategia-de-los-intermediarios-en-internet-y-el-impacto-en-el-entorno-digital>
- Facebook. "Terms of service", "About Intellectual Property." Available at: https://www.facebook.com/help/intellectual_property
- Instagram. "Terms of service", "How does Instagram process DMCA counter-notice?" Available at: <https://www.facebook.com/help/instagram/697328657009330?sr=6&query=What+information+is+provided+to+a+user+whose+content+is+removed+due+to+a+copyright+claim%3F>
- LUMEN Database. "DMCA Safe Harbor." Available at: <https://www.lumendatabase.org/topics/14>



- OMPI. "Internet Intermediaries and Creative Content" Available at: http://www.wipo.int/copyright/en/internet_intermediaries/index.html
- Onlinecensorship.org. (March 2016) "UNFRIENDING CENSORSHIP: Insights from four months of crowd-sourced data on social media censorship." Available at: https://s3-us-west-1.amazonaws.com/onlinecensorship/posts/pdfs/000/000/044/original/Onlinecensorship.org_Report_-_31_March_2016.pdf?2016
- Onlinecensorship.org. (November 2016) "CENSORSHIP IN CONTEXT: Insights from Crowdsourced Data on Social Media Censorship". Available at: https://s3-us-west-1.amazonaws.com/onlinecensorship/posts/pdfs/000/000/088/original/Censorship_in_Context_November_2016.pdf?2016
- Redpatodos (2012). "POSICIÓN DE REDPATODOS FRENTE A UN PROCEDIMIENTO DE NOTIFICACIÓN Y RETIRO DE CONTENIDOS PARA COLOMBIA" (Redpatodos' position regarding a Notice and Take-down procedure for Colombia). Available in Spanish at: <https://redpatodos.co/blog/procedimiento-notificacion-retiro/>
- THE DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998 U.S. Copyright Office Summary. December 1998. Available at: <https://www.copyright.gov/legislation/dmca.pdf>
- Twitter. "Términos de servicio" (Terms of service). Available in Spanish at: <https://twitter.com/tos?lang=es>
- Usuarios Digitales. "Boletín de prensa: Usuarios Digitales rechaza bloqueo de cuentas de Twitter que difunden información pública" (Press release: Usuarios Digitales rejects blocking of Twitter accounts spreading public information). Available in Spanish at: <http://www.usuariosdigitales.org/2016/07/20/boletin-de-prensa-usuarios-digitales-rechaza-bloqueo-de-cuentas-de-twitter-que-difunden-informacion-publica/>
- Vine. "Terms of service". Available at: <https://vine.co/terms>
- Winsports (2016). "Win Sports te explica aquí todo lo relacionado con el uso de material del FPC" (Win Sport explains you everything you need to know regarding the use of FPC content). Available in Spanish at: <http://newadmin.winsports.co/futbol-colombiano/noticias/win-sports-te-explica-aqui-todo-lo-relacionado-con-el-uso-de-material-del-fpc-5616>
- YouTube. "Terms of service," "Counter-notice Requirements." Available at: <https://support.google.com/youtube/answer/6005919>
- "17 U.S. Code § 512 - Limitations on liability relating to material online" Available at: <https://www.law.cornell.edu/uscode/text/17/512>



Table 1: Notice and Takedown

The DMCA is the Copyright Law of the United States created in 1998 in response to the treaties of the World Intellectual Property Organization - WIPO that were aimed at regulating copyright in the face of the challenges of the digital environment. It is divided into 5 titles and one of them includes specific provisions on online copyright infringement and creates the concept of Safe Harbor, which consists of the Internet intermediaries (or ISP standing for Internet Service Provider) being exempt from any liability that may arise from a possible infringement of the copyright generated by the users of its services. For this, the notice and takedown system, or notification system, was created, which leads to a withdrawal or blocking of contents when there is a complaint for copyright. This law even requires that ISPs have a policy of terminating account subscriptions that repeatedly commit copyright infringement.

When a copyright owner, or a duly authorized agent, wishes to submit a notice for a possible infringement of their right, they must include the following information:

1. Identification of the person or entity that sends the notice.
2. Clearly established relationship with the copyright holder.
3. Identification of content that allegedly violates copyright.
4. Formal statement where, under oath, they state that the information in the notice is correct and that the signer is the copyright holder or the one authorized to act on his behalf.
5. Physical or electronic signature along with a name and physical contact address in case someone wants to impugn the notice.

This system assumes that in case of considering that there is an error in the notice, the affected user can send a counter-notice so that its content or account can be restored. The counter-notice must contain:

1. A statement, under penalty of perjury, that the sender has good faith and that the material was eliminated or disabled as a result of an error or misidentification.
2. The identification of the material that has been eliminated and the place where it appeared before being withdrawn.
3. Personal contact information: Name, phone number, email, and a physical address.
4. A section in which the person presenting the counter-notice accepts the jurisdiction of the Federal District Court (in the United States) in which the provided address is located. If the address is outside the United States, the person accepts the jurisdiction of any judicial district in which the service provider may be found, and that the subscriber accepts the judicial process of the person who provided the notice to its representative.
5. Electronic signature.

According to the DMCA, once the ISP receives the counter-notice, it must wait 10 to 15 days before reactivating or allowing access to the content, unless the person who submitted the notice files an order in court against the owner of the content or the possibly infringing account.



Cuadro 2: análisis de los casos

	User	Sex	Country	Twitter	Facebook	Vine	Youtube	Withdrawn content	Account cancellation	Counter-notice made or similar	Content and/or account restored	Received answer or follow-up
1	MillonariosNY	M	Col	X				X	-	-	-	-
2	@soyandresacosta	M	Col	X				X	Tw	X	-	X
3	@futbolsinlimite	M	Col		X			X	-	X	-	-
4	@juezcentral	M	Col	X				X	Tw	X	X	-
5	@humoblancoll2 @humoblancoll	M	Col	X				X	Tw	X	X	-
6	@10_fernandomg	M	Col				X	X	YouTube	-	-	-
7	Notimillos	M	Col			X		X	Vine	X	-	-
8	Lo doy porque quiero	M	Col				X	X	-	X	-	X
9	Sebastián Martínez Diseñador	M	Col		X			X	Fb	X	X	-
10	Carta Blanca	M	Venezuela				X	X	-	X	X	X
11	Yeimis	M	Col	X				X	Tw	X	X	-
	TOTALS	11		5	2	1	3	11	7	9	5	3
									1 YouTube			
									1 Vine			
									1 Facebook			
									1 Twitter			
<p><u>Conventions:</u> Yes X No: - Tw: Twitter Fb: Facebook M: Male Col: Colombia</p>												



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of expression on the internet***

Carolina Botero
Laura Mora
María Juliana Soto



karisma.org.co

Twitter: @Karisma

Facebook: @fundacionkarisaaa

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